IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.488 of 2004
IN
ARBITRATION PETITION NO.196 OF 2004

1. Eswaran & Sons Engineers Ltd.
& ors. Appellants

vs.

Nishkalp Investments & Trading
Company Ltd. Respondent

Mr.A.Y. Bookwala i/b. Mr.N.S.Nappinai for the appellants.

Mr.R.M.Kadam with Mr.Dinesh Purandare i/b. M/s.Madekar & Co. for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 15th October 2004

P.C.

At the outset, the learned counsel for the appellants submitted that the appellants are ready and willing to give an undertaking that they would not dispose or part with possession or alienate or encumber or create any third party right, title or interest in respect of the properties/assets described in Exhibits B-1, B-2 and B-3 to the arbitration petition under section 9 filed by the present respondent. The learned counsel also submitted that the appellants are willing to undertake that they would not dispose of or alienate or encumber or create any third party right, title or

interest in respect of the shares described in schedule to Exhibit F to the said petition.

2. In the backdrop of the submission of the learned counsel for the appellants, the learned counsel for the respondent submitted that the respondent is not desirous of seeking any further relief presently in the arbitration petition since the question of jurisdiction is under consideration by the arbitrator under Section 16 of Arbitration and Conciliation Act, 1996. The learned counsel for the respondent, however, submitted that in the light of the decision that may be given by the arbitrator concerning the aspect of jurisdiction, liberty may be given to the said respondent to take appropriate proceedings for interim measure of protection either under Section 17 or section 9 of the Act of 1996.

3. In the light of the submissions made by the learned counsel for the parties, we are satisfied that this appeal may be disposed of by the following order:

(i) The appellants shall file an undertaking before this Court within two weeks from today as per the statement made by their counsel and recorded hereinabove.

(ii) In the light of the undertaking by the appellants the arbitration petition no.196/2004 stands withdrawn and the impugned order is rendered ineffective.

(iii) The respondent shall be at liberty to apply for interim measure of protection either under Section 9 or Section 17 of the Act of 1996,if necessary, in the light of the order that may be passed by the arbitrator on the question of jurisdiction.

4. The appeal is disposed of accordingly.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)